**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
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| Truth-in-Billing and Billing Format | ) | CC Docket No. 98-170 |
| | ) | |
| National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing | ) | CG Docket No. 04-208 |

REPLY COMMENTS OF NENA

The National Emergency Number Association ("NENA") hereby responds to the comments of others on the Second Further Notice of Proposed Rulemaking ("Notice") in the captioned proceeding.[1] NENA represents state and local 9-1-1 authorities whose funding depends significantly on surcharges of customer bills for wire and wireless telephone service. These authorities are concerned that customers understand and accept the reasons for and content of the surcharges.

NENA believes that customer understanding and acceptance of surcharges that contribute directly to 9-1-1 support, as well as permissible carrier cost recovery (*e.g.* "Phase II" wireless caller location), will be furthered by the Notice's tentative conclusions:

- That "mandated" and discretionary bill items be distinguished; and

[1] 70 Federal Register 30044, May 25, 2005.

- That these two types of items be separately formatted on customer bills.

The Notice offers two characterizations of mandated charges. In the first (¶40), the charges would include only those amounts

> that a carrier is *required* to collect directly from customers, and remit to federal, state or local governments[.] Under this definition, some examples of mandated charges would include state and local taxes, federal excise taxes on communication services, and some state E911 fees.

In the second characterization (¶41), "a charge to recover universal service contributions would be considered to be government 'mandated'," even though the amount is not required to be collected directly from customers. The Notice observes that the first characterization would be consistent with a recent settlement between and among national wireless carriers and Attorneys General in a majority of states,[2] while the second corresponds to Item 6 of the CTIA Consumer Code.

An older but related settlement was secured with Nextel West and Sprint PCS by the Attorney General of Missouri, who filed a consumer protection complaint in 2002 alleging that the wireless carriers were deceptively mingling mandated and non-mandated charges on their customers' bills. Among the consequences, said the complaint, was to label as government "assessments" new charges that otherwise would have constituted rate increases and would have triggered subscribers' rights to terminate the contracts.[3]

Four of the five national wireless carriers support separation of mandated from discretionary line item collections along the lines of the AVC (note 2, *supra*) negotiated last year by 32 state Attorneys General with Verizon Wireless, Cingular and Sprint. Cingular now includes AT&T. Nextel appears reconciled to the specific

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[2] Styled "Assurance of Voluntary Compliance" or "AVC," the settlement is first cited at note 28 of the accompanying Second Report and Order. It dates from mid-2004.

type of separation called for in the

[3] http://www.ago.mo.gov/lawsuits/2002/nextelsprint120502.pdf.

AVC, rather than the type suggested by CTIA in its voluntary code. Even T-Mobile, which does not support separation as an initial position, simply says that if such a federal requirement is adopted, it should preempt inconsistent state regulations. The other national carriers also support FCC preemption.

Consumer protection agencies -- including the National Association of Attorneys General (NAAG), NARUC and NASUCA, plus four individual state commissions or agencies -- support the AVC type of separate format for mandated charges. However, they oppose FCC preemption of additional or different state regulation.

Congruent with the distinction between mandated and non-mandated charges, the two types should be segregated and separately formatted on customer bills, to avoid any recurrence of the carrier conduct that led to the Missouri deceptive practices complaint. (Note 3, *supra*) Such separation will not fulfill its objectives of consumer protection, however, unless the apportionment of FCC and state/local responsibilities is sufficiently flexible to accommodate the sheer variety of funding and cost recovery arrangements across the country.[4]

In short, we do not think a "uniform, nationwide federal regime" (Notice, ¶52) will work if it preempts state regulation of explanatory language for bill entries. That is, the issue of descriptive clarity ought to fall within "generally applicable contractual and consumer protection laws" (Notice, ¶53) to be enforced by the respective states. Of course,

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[4] A table of wire and wireless surcharges may be found at http://www.nena.org/DOT/Surcharges%209-1-1.pdf. Standing alone, the mere numbers do not encompass the range of state and local legislation dealing with both carrier and PSAP cost recovery. Another NENA table provides some of this context: http://www.nena.org/Wireless911/PDF/State%20Wireless%20Funding%2011-16-01.PDF.

such state regulation must not infringe on freedom of commercial speech under the First Amendment.

The Notice asks (¶49) "whether it is unreasonable under Section 201(b) of the Act for line items to combine federal regulatory charges." If state and local governments retain, at a minimum, the power to assure clarity in line item descriptions, combinations of regulatory charges would have to pass the test of clarity. For example, we believe it would be unnecessarily confusing – and possibly deceptive -- to combine non-mandated charges related to universal service fund contributions with non-mandated charges related to recovery of Phase II wireless location costs. The first set of charges, for the most part, winds up in government coffers. The second does not.

The Notice's tentative conclusions favoring expanded federal preemption of state prescriptions or restrictions of carrier billing are not obvious from the evidence cited in the accompanying Order or Declaratory Ruling. The Notice (¶52) claims that "inconsistent state regulation . . . is spreading across the country, making nationwide service more expensive for carriers to provide and raising the cost of service to consumers." So far as we can see, the support for this proposition is limited to notes 87 and 88 in the Ruling, none of which speaks to added costs on carriers or their customers. Before the Commission subtracts from state consumer protection authority in favor of its mission to extend telecommunications competition, it needs better evidence of the alleged "patchwork of inconsistent rules" that would undermine carriers' ability to "design national or regional rate plans." (Declaratory Ruling, ¶35)

## CONCLUSION

For the reasons discussed above, the Commission should adopt truth-in-billing regulations that distinguish clearly between mandated and non-mandated charges, aided

by separate formatting and clear explanations. The present balance of federal and state authority should be disturbed only to the extent that state and local actions can be clearly shown to interfere with paramount federal objectives.

Respectfully submitted,

NENA

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